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Attorneys for Defendant  
 ADZILLA, INC.  
 (erroneously named herein as "ADZILLA, INC. [NEW MEDIA]")

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SUSAN SIMON, an individual on behalf of  
 herself and all other similarly situated,

Plaintiff,

v.

ADZILLA, INC. [NEW MEDIA], a Delaware  
 Corporation; CONDUCTIVE  
 CORPORATION, a Delaware Corporation;  
 CONTINENTAL VISINET BROADBAND,  
 INC., a Delaware Corporation; CORE  
 COMMUNICATIONS, INC., d/b/a  
 CORETEL COMMUNICATIONS, INC., a  
 Delaware Corporation; and JOHN DOES 1-  
 50, Corporations Defendants,

Defendant.

Case No. 3:09-CV-00879 MMC

**DEFENDANT ADZILLA, INC.'S  
 ANSWER TO COMPLAINT**

**JURY TRIAL DEMANDED**

Defendant Adzilla, Inc. ("Adzilla"), erroneously named herein as "Adzilla, Inc. [New Media], by its attorneys, for its answer to the Complaint by Plaintiff Susan Simon, alleges as follows:

**NATURE OF THE ACTION**

1. Adzilla admits that the Complaint alleges a class action lawsuit brought by and on behalf of similarly situated internet users. Adzilla denies that any class and/or subclass may or should be certified in this action. Adzilla denies the remaining allegations of Paragraph 1 of the Complaint.

2. Adzilla denies the allegations in Paragraph 2 of the Complaint.

3. Adzilla denies the allegations in Paragraph 3 of the Complaint.

4. Adzilla denies the allegations in Paragraph 4 of the Complaint.

5. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint and on that basis denies the same.

6. Adzilla lacks knowledge or information sufficient to form a belief about the putative class plaintiff purports to represent, and therefore denies the allegations of Paragraph 6. Adzilla expressly denies that any class and/or subclass may or should be certified in this action.

7. Adzilla states that the allegations in Paragraph 7 of the Complaint are legal conclusions to which no response is needed, but to the extent a response is required, Adzilla answers as follows: Denied.

## JURISDICTION AND VENUE

8. Adzilla admits that the Complaint alleges that this Court has jurisdiction under 28 U.S.C. § 1332.

9. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint and on that basis denies the same.

10. Adzilla admits that it is incorporated in the state of Delaware and a citizen of Delaware, but denies that its U.S. headquarters is currently located in San Mateo, California and that it is a citizen of California. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10 of the Complaint and on that basis denies the same. Adzilla expressly denies that any class and/or subclass may or should be certified in this action.

11. Adzilla admits that the Complaint alleges that personal jurisdiction is proper. Adzilla states that the remaining allegations in Paragraph 11 of the Complaint are legal conclusions to which no response is needed, but to the extent a response is required, Adzilla answers as follows: Denied.

12. Adzilla admits that if this Court has jurisdiction to hear and adjudicate this matter, then venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c). Adzilla denies that its

principal executive offices and headquarters are located in this District. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 12 of the Complaint and on that basis denies the same.

13. Adzilla admits that the Complaint alleges that personal jurisdiction is proper. Adzilla denies the remaining allegations set forth in Paragraph 13 of the Complaint.

14. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint and on that basis denies the same.

#### INTRADISTRICT ASSIGNMENT

15. Adzilla denies that its executive offices and headquarters are located in this District. Adzilla states that the remaining allegations in Paragraph 15 of the Complaint are legal conclusions to which no response is needed, but to the extent a response is required, Adzilla answers as follows: Denied.

#### PARTIES

16. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint and on that basis denies the same.

17. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint and on that basis denies the same.

18. Adzilla denies that its headquarters are maintained in Brisbane, California, and that it does business throughout the United States, and in particular, does business in the State of California and in San Mateo, San Francisco, or Alameda County. Adzilla admits that it was acquired by Conducive Corporation as of May 3, 2006.

19. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint and on that basis denies the same.

20. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint and on that basis denies the same.

21. Adzilla admits that it issued the press release referenced in Paragraph 21, and states that the press release speaks for itself. Adzilla denies the remaining allegations in Paragraph 21 of the Complaint.

22. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations, or the accuracy of the reproduced materials, in Paragraph 22 of the Complaint and on that basis denies the same.

23. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint and on that basis denies the same.

24. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint and on that basis denies the same.

#### FACTUAL ALLEGATIONS

25. Adzilla denies the allegations in Paragraph 25 of the Complaint.

26. Adzilla denies the allegations in Paragraph 26 of the Complaint.

27. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint and on that basis denies the same.

28. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint and on that basis denies the same.

29. Adzilla lacks knowledge or information sufficient to form a belief about Mr. Ohm, his title, and his purported observations, as set forth in Paragraph 29 of the Complaint, and on that basis denies the allegations contained therein.

30. Adzilla denies the allegations in Paragraph 30 of the Complaint.

31. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint and on that basis denies the same.

32. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint and on that basis denies the same.

33. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint and on that basis denies the same.

34. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint and on that basis denies the same.

35. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 of the Complaint and on that basis denies the same.

1           36.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
2 the allegations in Paragraph 36 of the Complaint and on that basis denies the same.

3           37.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
4 the allegations in Paragraph 37 of the Complaint and on that basis denies the same.

5           38.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
6 the allegations in Paragraph 38 of the Complaint and on that basis denies the same.

7           39.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
8 the allegations in Paragraph 39 of the Complaint and on that basis denies the same.

9           40.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
10 the allegations in Paragraph 40 of the Complaint and on that basis denies the same.

11          41.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
12 the allegations in Paragraph 41 of the Complaint and on that basis denies the same.

13          42.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
14 the allegations in Paragraph 42 of the Complaint and on that basis denies the same.

15          43.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
16 the allegations in Paragraph 43 of the Complaint and on that basis denies the same.

17          44.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
18 the allegations in Paragraph 44 of the Complaint and on that basis denies the same.

19          45.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
20 the allegations in Paragraph 45 of the Complaint and on that basis denies the same.

21          46.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
22 the allegations in Paragraph 46 of the Complaint and on that basis denies the same.

23          47.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
24 the allegations in Paragraph 47 of the Complaint and on that basis denies the same.

25          48.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
26 the allegations in Paragraph 48 of the Complaint and on that basis denies the same.

27          49.     Adzilla lacks knowledge or information sufficient to form a belief as to the truth of  
28 the allegations in Paragraph 49 of the Complaint and on that basis denies the same.

50. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint and on that basis denies the same.

51. Adzilla lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint and on that basis denies the same.

52. Adzilla lacks knowledge or information sufficient to form a belief as to the accuracy of the statements reproduced in Paragraph 52 of the Complaint, and on that basis denies the same.

53. Adzilla denies the allegations in Paragraph 53 of the Complaint.

54. Adzilla lacks knowledge or information sufficient to form a belief as to the accuracy of the materials reproduced in Paragraph 54 of the Complaint, and on that basis denies the same.

55. Adzilla denies the allegations set forth in Paragraph 55 of the Complaint.

56. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 56 of the Complaint and on that basis denies the same.

57. Adzilla denies the allegations in Paragraph 57 of the Complaint.

58. Adzilla denies the allegations in Paragraph 58 of the Complaint.

59. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 59 of the Complaint and on that basis denies the same.

60. Adzilla denies the allegations in Paragraph 60 of the Complaint.

61. Adzilla denies the allegations in Paragraph 61 of the Complaint.

62. Adzilla denies the allegations in Paragraph 62 of the Complaint. Adzilla further maintains that certain statements in Paragraph 62 of the Complaint are legal conclusions to which no response is needed, but to the extent a response is required, Adzilla answers as follows:  
Denied.

63. Adzilla denies the allegations in Paragraph 63 of the Complaint.

64. Adzilla admits that it issued the press release referenced in Paragraph 64, and states that the press release speaks for itself. Adzilla lacks knowledge and information regarding the accuracy of statements reproduced in Paragraph 64 of the Complaint, and denies the

1 remaining allegations in Paragraph 64 of the Complaint.

2 65. Adzilla lacks knowledge or information sufficient to form a belief as to the  
3 allegations in Paragraph 65 of the Complaint and on that basis denies the same.

4 66. Adzilla lacks knowledge or information sufficient to form a belief as to the  
5 allegations in Paragraph 66 of the Complaint and on that basis denies the same.

6 67. Adzilla lacks knowledge or information sufficient to form a belief as to the  
7 allegations in Paragraph 67 of the Complaint and on that basis denies the same.

8 68. Adzilla lacks knowledge or information sufficient to form a belief as to the  
9 allegations in Paragraph 68 of the Complaint and on that basis denies the same.

10 69. Adzilla lacks knowledge or information sufficient to form a belief as to the  
11 allegations in Paragraph 69 of the Complaint and on that basis denies the same.

12 70. Adzilla lacks knowledge or information sufficient to form a belief as to the  
13 allegations in Paragraph 70 of the Complaint and on that basis denies the same.

14 71. Adzilla lacks knowledge or information sufficient to form a belief as to the  
15 allegations in Paragraph 71 of the Complaint and on that basis denies the same.

16 72. Adzilla lacks knowledge or information sufficient to form a belief as to the  
17 allegations in Paragraph 72 of the Complaint and on that basis denies the same.

18 73. Adzilla denies the allegations in Paragraph 73 of the Complaint.

19 74. Adzilla denies the allegations in Paragraph 74 of the Complaint.

20 75. Adzilla admits that its headquarters were located in California during the time  
21 periods relevant to the allegations set forth in the Complaint. Adzilla denies the remaining  
22 allegations in Paragraph 75 of the Complaint.

23 76. Adzilla denies the allegations in Paragraph 76 of the Complaint.

24 77. Adzilla denies the allegations in Paragraph 76 of the Complaint.

25 78. Adzilla denies the allegations in Paragraph 78 of the Complaint.

26 79. Adzilla lacks knowledge or information sufficient to form a belief as to the  
27 allegations in Paragraph 79 of the Complaint and on that basis denies the same.

28 80. Adzilla lacks knowledge or information sufficient to form a belief as to the

1 allegations in Paragraph 80 of the Complaint and on that basis denies the same.

2 81. Adzilla denies the allegations in Paragraph 81 of the Complaint.

3 82. Adzilla denies the allegations in Paragraph 82 of the Complaint.

4 83. Adzilla lacks knowledge or information sufficient to form a belief as to the  
5 accuracy of any reproduced statements and the allegations contained in Paragraph 83 of the  
6 Complaint and on that basis denies the same.

7 84. Adzilla lacks knowledge or information sufficient to form a belief as to the  
8 allegations in Paragraph 84 of the Complaint and on that basis denies the same.

9 85. Adzilla lacks knowledge or information sufficient to form a belief as to the  
10 allegations in Paragraph 85 of the Complaint and on that basis denies the same.

11 86. Adzilla lacks knowledge or information sufficient to form a belief as to the  
12 allegations in Paragraph 86 of the Complaint and on that basis denies the same.

13 87. Adzilla lacks knowledge or information sufficient to form a belief as to the  
14 allegations in Paragraph 87 of the Complaint and on that basis denies the same.

15 88. Adzilla denies the allegations in Paragraph 88 of the Complaint.

#### 16 **CLASS ALLEGATIONS**

17 89. Adzilla denies that any class /andor subclass may or should be certified in this  
18 action.

19 90. Adzilla denies that any class and/or subclass may or should be certified in this  
20 action.

21 91. Adzilla states that the allegations in Paragraph 91 of the Complaint are legal  
22 conclusions to which no response is needed, but to the extent a response is required, Adzilla  
23 answers as follows: Denied.

24 92. Adzilla admits that plaintiff purports to bring this putative class action pursuant to  
25 Fed. R. Civ. P. 23. Adzilla denies that any classes and/or subclasses may or should be certified in  
26 this action. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining  
27 allegations in Paragraph 92 of the Complaint and on that basis denies the same.

28 93. Adzilla denies the allegations in Paragraph 93 of the Complaint.



94. Adzilla denies the allegations in Paragraph 94 of the Complaint.

95. Adzilla denies the allegations in Paragraph 95 and all subparts to Paragraph 95 of the Complaint.

96. Adzilla denies the allegations in Paragraph 96 of the Complaint.

97. Adzilla denies the allegations in Paragraph 97 of the Complaint.

98. Adzilla denies the allegations in Paragraph 98 of the Complaint.

99. Adzilla denies the allegations in Paragraph 99 of the Complaint.

100. Adzilla denies the allegations in Paragraph 100 of the Complaint.

101. Adzilla denies the allegations in Paragraph 101 of the Complaint.

102. Adzilla denies the allegations in Paragraph 102 of the Complaint.

103. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 103 of the Complaint and on that basis denies the same.

104. Adzilla denies the allegations in Paragraph 104 of the Complaint.

## COUNT I

105. In response to Paragraph 105 of the Complaint, Adzilla incorporates by reference its responses to Paragraphs 1 through 104 above as if fully set forth herein.

106. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 106 of the Complaint and on that basis denies the same.

107. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 107 of the Complaint and on that basis denies the same.

108. Adzilla admits the existence of the statute cited in Paragraph 108.

109. Adzilla denies the allegations in Paragraph 109 of the Complaint.

110. Adzilla denies the allegations in Paragraph 110 of the Complaint.

111. Adzilla denies the allegations in Paragraph 111 of the Complaint.

112. Adzilla denies the allegations in Paragraph 112 of the Complaint.

113. Adzilla denies the allegations in Paragraph 112 of the Complaint.

114. Adzilla denies the allegations in Paragraph 114 of the Complaint.

115. Adzilla denies the allegations in Paragraph 115 of the Complaint.

116. Adzilla denies the allegations in Paragraph 116 of the Complaint.

117. Adzilla denies any and all liability for this cause of action. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining allegations set forth in Paragraph 117 of the Complaint and on that basis denies the same.

118. Adzilla denies the allegations in Paragraph 118 of the Complaint.

## COUNT II

119. In response to Paragraph 119 of the Complaint, Adzilla incorporates by reference its responses to Paragraphs 1 through 118 above as if fully set forth herein.

120. Adzilla states that the allegations in Paragraph 120 of the Complaint are legal conclusions to which no response is needed, but to the extent a response is required, Adzilla answers as follows: Denied.

121. Adzilla states that the allegations in Paragraph 121 of the Complaint are legal conclusions to which no response is needed, but to the extent a response is required, Adzilla answers as follows: Denied.

122. Adzilla admits the existence of the statute cited in Paragraph 122 of the Complaint.

123. Adzilla admits the existence of the statute cited in Paragraph 123 of the Complaint.

124. Adzilla denies the allegations in Paragraph 124 of the Complaint.

125. Adzilla denies the allegations in Paragraph 125 of the Complaint.

126. Adzilla denies the allegations in Paragraph 126 of the Complaint.

127. Adzilla denies the allegations in Paragraph 127 of the Complaint.

128. Adzilla denies the allegations in Paragraph 128 of the Complaint.

129. Adzilla denies the allegations in Paragraph 129 of the Complaint.

130. Adzilla denies the allegations in Paragraph 130 of the Complaint.

131. Adzilla denies the allegations in Paragraph 131 of the Complaint.

132. Adzilla denies any and all liability for this cause of action. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 132 of the Complaint and on that basis denies the same.

133. Adzilla denies the allegations in Paragraph 133 of the Complaint.

**COUNT III**

134. In response to Paragraph 134 of the Complaint, Adzilla incorporates by reference its responses to Paragraphs 1 through 133 above as if fully set forth herein.

135. Adzilla states that the allegations in Paragraph 135 of the Complaint are legal conclusions to which no response is needed, but to the extent a response is required, Adzilla answers as follows: Denied.

136. Adzilla denies the allegations in Paragraph 136 of the Complaint.

137. Adzilla admits the existence of the statute cited in Paragraph 137 of the Complaint.

138. Adzilla denies the allegations in Paragraph 138 of the Complaint.

139. Adzilla denies the allegations in Paragraph 139 of the Complaint.

140. Adzilla denies the allegations in Paragraph 140 of the Complaint.

141. Adzilla denies the allegations in Paragraph 141 of the Complaint.

142. Adzilla denies the allegations in Paragraph 142 of the Complaint.

143. Adzilla denies the allegations in Paragraph 143 of the Complaint.

144. Adzilla admits the existence of the statute cited in Paragraph 144 of the Complaint.

145. Adzilla denies the allegations in Paragraph 145 of the Complaint.

146. Adzilla denies the allegations in Paragraph 146 of the Complaint, and specifically that plaintiff is entitled to reimbursement of its attorneys' fees.

147. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 147 of the Complaint and on that basis denies the same.

**COUNT IV**

148. In response to Paragraph 148 of the Complaint, Adzilla incorporates by reference its responses to Paragraphs 1 through 147 above as if fully set forth herein.

149. Adzilla states that the allegations in Paragraph 149 of the Complaint are legal conclusions to which no response is needed, but to the extent a response is required, Adzilla answers as follows: Denied.

150. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 150 of the Complaint and on that basis denies the same.

151. Adzilla denies the allegations in Paragraph 151 of the Complaint.

152. Adzilla denies the allegations in Paragraph 152 of the Complaint.

153. Adzilla denies that any data was collected by the Zillacaster. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining allegations set forth in Paragraph 153 of the Complaint, and on that basis denies the same.

154. Adzilla denies the allegations in Paragraph 154 of the Complaint.

155. Adzilla denies the allegations in Paragraph 155 of the Complaint.

156. Adzilla denies the allegations in Paragraph 156 of the Complaint.

157. Adzilla denies the allegations in Paragraph 157 of the Complaint.

158. Adzilla denies the allegations in Paragraph 158 of the Complaint.

#### COUNT V

159. In response to Paragraph 159 of the Complaint, Adzilla incorporates by reference its responses to Paragraphs 1 through 158 above as if fully set forth herein.

160. Adzilla states that the allegations in Paragraph 160 of the Complaint are legal conclusions to which no response is needed, but to the extent a response is required, Adzilla answers as follows: Denied.

161. Adzilla admits the existence of the statute cited in Paragraph 161 of the Complaint.

162. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 162 of the Complaint and on that basis denies the same.

163. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 163 of the Complaint and on that basis denies the same.

164. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 164 of the Complaint and on that basis denies the same.

165. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 165 of the Complaint and on that basis denies the same.

166. Adzilla denies the allegations in Paragraph 166 of the Complaint.

167. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 167 of the Complaint and on that basis denies the same.

168. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 168 of the Complaint and on that basis denies the same.

169. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 169 of the Complaint and on that basis denies the same.

170. Adzilla lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 170 of the Complaint and on that basis denies the same.

171. Adzilla denies the allegations in Paragraph 171 of the Complaint.

172. Adzilla denies the allegations in Paragraph 172 of the Complaint.

## COUNT VI

173. In response to Paragraph 173 of the Complaint, Adzilla incorporates by reference its responses to Paragraphs 1 through 172 above as if fully set forth herein.

174. Adzilla denies the allegations in Paragraph 174 as they may pertain to Adzilla's conduct. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining allegations set forth in Paragraph 174 of the Complaint and on that basis denies the same.

175. Adzilla denies the allegations in Paragraph 175 as they may pertain to Adzilla's conduct. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining allegations set forth in Paragraph 175 of the Complaint and on that basis denies the same.

176. Adzilla denies the allegations in Paragraph 176 as they may pertain to Adzilla's conduct. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining allegations set forth in Paragraph 176 of the Complaint and on that basis denies the same.

177. Adzilla denies the allegations in Paragraph 177 as they may pertain to Adzilla's conduct. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining allegations set forth in Paragraph 177 of the Complaint and on that basis denies the same.

178. Adzilla denies the allegations in Paragraph 178 as they may pertain to Adzilla's conduct. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining allegations set forth in Paragraph 178 of the Complaint and on that basis denies the same.

179. Adzilla denies the allegations in Paragraph 179 of the Complaint.

180. Adzilla lacks knowledge or information sufficient to form a belief as to the

1 allegations set forth in Paragraph 180 of the Complaint and on that basis denies the same.

## 2 **COUNT VII**

3 181. In response to Paragraph 181 of the Complaint, Adzilla incorporates by reference  
4 its responses to Paragraphs 1 through 180 above as if fully set forth herein.

5 182. Adzilla denies the allegations in Paragraph 182 as they may pertain to Adzilla's  
6 conduct. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining  
7 allegations set forth in Paragraph 182 of the Complaint and on that basis denies the same.

8 183. Adzilla denies the allegations in Paragraph 183 as they may pertain to Adzilla's  
9 conduct. Adzilla lacks knowledge or information sufficient to form a belief as to the remaining  
10 allegations set forth in Paragraph 183 of the Complaint and on that basis denies the same.

11 184. Adzilla denies the allegations in Paragraph 184 of the Complaint.

12 185. Adzilla denies the allegations in Paragraph 185 of the Complaint.

13 186. Adzilla lacks knowledge or information sufficient to form a belief as to the  
14 allegations set forth in Paragraph 186 of the Complaint and on that basis denies the same.

## 15 **COUNT VIII**

16 187. In response to Paragraph 187 of the Complaint, Adzilla incorporates by reference  
17 its responses to Paragraphs 1 through 186 above as if fully set forth herein.

18 188. Adzilla states that the allegations in Paragraph 188 of the Complaint are legal  
19 conclusions to which no response is needed, but to the extent a response is required, Adzilla  
20 answers as follows: Denied.

21 189. Adzilla denies the allegations in Paragraph 189 of the Complaint.

22 190. Adzilla denies the allegations in Paragraph 190 of the Complaint.

23 191. Adzilla denies the allegations in Paragraph 191 of the Complaint.

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25  
26 ///

27 ///

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**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Attorney's Fees and Costs Unavailable)**

The Complaint fails to allege facts sufficient to meet the statutory requirements for attorney's fees.

**THIRD AFFIRMATIVE DEFENSE**

**(Lack of Standing)**

Plaintiff and the putative class members lack standing to assert one or more of the claims alleged in the Complaint.

**FOURTH AFFIRMATIVE DEFENSE**

**(Ordinary Course of Business Exemption)**

The Complaint alleges conduct falling within the ordinary course of business exemption under federal and state law.

**FIFTH AFFIRMATIVE DEFENSE**

**(Waiver/Estoppel)**

Plaintiff and the putative class members consented to the conduct alleged in the Complaint, and thus have waived any right to assert their claims and are estopped from asserting their claims.

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Due Process)**

3 The claims asserted in the Complaint are barred, in whole or in part, by the Due process  
4 clauses of the United States Constitution and California Constitution, to the extent they seek  
5 certification of the purported class on the basis of statutory damages alone, where no other  
6 injuries or economic losses were sustained.

7  
8 **SEVENTH AFFIRMATIVE DEFENSE**

9 **(Preemption)**

10 The claims asserted in the Complaint are preempted, in whole or in part, by federal law  
11 including but not limited to 18 U.S.C. § 2510, et seq.

12  
13 **EIGHTH AFFIRMATIVE DEFENSE**

14 **(Interstate and Foreign Commerce)**

15 The claims asserted in the Complaint are barred, in whole or in part, by the Commerce  
16 Clause of the United States Constitution, to the extent they seek to discriminate against interstate  
17 and foreign commerce by imposing impermissible burdens on the same and regulating matters  
18 occurring in states other than California.

19  
20 **NINTH AFFIRMATIVE DEFENSE**

21 **(Laches)**

22 The equitable claims asserted in the Complaint are barred, in whole or in part, by the  
23 doctrine of laches.

24  
25 **TENTH AFFIRMATIVE DEFENSE**

26 **(Consent)**

27 The claims asserted in the Complaint are barred, in whole or in part, by plaintiff's consent  
28 to, notification of, ratification of, and/or acceptance of the challenged conduct.



**ELEVENTH AFFIRMATIVE DEFENSE**

**(Failure to Timely Notify)**

The claims asserted in the Complaint are barred, in whole or in part, by plaintiff's failure to provide her ISP with timely notice of her desire to opt-out.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Vicarious Liability Unavailable)**

The claims asserted in the Complaint are barred, in whole or in part, because Adzilla cannot be held vicariously liable for the alleged wrongful acts of others, including the other defendants.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Necessary Incident)**

The claims asserted in the Complaint are barred, in whole or in part, by the "necessary incident" exception set forth at 18 U.S.C. § 2511(2)(a)(i).

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Good Faith)**

The claims asserted in the Complaint are barred, in whole or in part, by the "good faith reliance" defense set forth at 18 U.S.C. § 2520(d).

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Mootness)**

The asserted claims are barred, in whole or in part, because they are moot.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Public Utility Exception)**

The claims asserted in the Complaint are barred, in whole or in part, by the public utility exception under Cal. Penal Code § 631(b).

**RESERVATION OF ADDITIONAL AFFIRMATIVE DEFENSES**

Adzilla reserves the right to assert any and all affirmative defenses and/or additional defenses that may appear or become available during the discovery or other proceedings in this case and hereby reserves the right to amend its Answer to assert any such defenses.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant Adzilla, Inc. denies that plaintiff is entitled to certification of any class, and denies that plaintiff is entitled to any of the relief requested in her Prayer for Relief, either on her own behalf or on behalf of a putative class. Adzilla requests judgment as follows:

(a) Dismissal of the Complaint with prejudice and/or entry of judgment in favor of Adzilla;

(b) An award of its costs of suit and reasonable attorneys' fees; and

(c) Such other and further relief as the Court deems just and appropriate.

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**DEMAND FOR JURY TRIAL**

Adzilla hereby demands a jury trial for all applicable claims.

Dated: June 15, 2009

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